

A Report on the Legal Status of Homemakers in Virginia, 1977

WOMEN'S PLACE UNDER MARRIAGE AND DIVORCE LAW: VIRGINIA

INTRODUCTION

Perhaps in no other State are women so flattered, deferred to, and "pedestalized" as in that deep-South outpost that calls itself the Old Dominion or, less modestly, the Cavalier Commonwealth. The cavalier mentality is very much geared to the protection of women, but it has long regarded the notion of their equality as an insult.

Indeed, even after the State passed an amendment to its constitution in 1971 that mandates equal treatment of the sexes ^{1/} the Virginia Supreme Court held, in effect, that sex discrimination is permissible as long as it has a "rational" basis. ^{2/} It is apparent from a review of Virginia statutes and cases, that in the Old Dominion women will need the Federal Equal Rights Amendment to assure fair treatment under the law. ^{3/} This paper will consider some of those statutes and cases and their impact on married women living with their husbands and on women whose marriages have ended either because of the death of their husbands or because of divorce.

THE MARRIED HOMEMAKER

Property

Virginia is a common-law property State and this legal arrangement may afford a married woman less protection than she enjoys in the "community property" States to the West. Simply stated, in community property States all earnings and property acquired by either spouse after the marriage are owned by both spouses in equal proportions, whereas in common-law property States, like Virginia, each party owns and controls his or her own earnings and property. In Virginia, as in most States, there has been a Married Women's Property Act since 1877. The statute provides that a married woman has "the right to acquire, hold, use, control and dispose of property

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